

**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)
REPUBLIC OF SOUTH AFRICA**



CASE NO: 16971/18

In the matter between:

SOUTH AFRICAN SECURITISATION PROGRAMME (RF)

LIMITED

1ST APPLICANT/PLAINTIFF

SASFIN BANK LIMITED

2ND APPLICANT/PLAINTIFF

SUNLYN (PTY) LTD

3RD APPLICANT/PLAINTIFF

and

SPECIALISED AUTO CENTRE (PTY) LTD

1ST RESPONDENT/DEFENDANT

ALBERT AGEMA

2ND RESPONDENT/DEFENDANT

BEUKES, JACOBUS JOHANNES

3RD RESPONDENT/DEFENDANT

BEUKES, EUGENE TERTIUS

4TH RESPONDENT/DEFENDANT

THE CLERK OF THE MAGISTRATES'

COURT, PRETORIA CENTRAL

**5TH RESPONDENT/INTERESTED
PARTY**

REASONS JUDGEMENT

LUKHAIMANE AJ:

1. This matter is an application for the variation of a court order in terms of Rule 42(1)(b) of the Rules of Court. The court order was granted by Justice Molopa-Sethosa on 13 May 2019 in response to an application for default judgement against the first and third respondents.

2. The court order reads as follows:

“HAVING HEARD counsel(s) for the party(ies) and having read the documents filed of (sic) record

IT IS ORDERED THAT

1. The matter is removed from the roll, must be issued at the Magistrate’s Court
2. No cost order.”

3. This is the extent of the order.

4. The transcribed proceedings held on 13 May 2019 are just as brief.

“COURT: Yes

COURT CLERK: As the court pleases, M’Lady. May I refer you to matter 8 on Page

2. The matter of South African Securitisation versus Specialised ... [Intervened]

COURT: Did you see my smile? Because this seems a matter for the magistrate’s court.

COURT CLERK: I saw the quantum, M’Lady. As the court pleases, M’Lady.

COURT: Mm. So this matter ...[Intervened]

COURT CLERK: Is removed from Your Ladyship's roll.

COURT: Is removed. It must be taken to the magistrate's court.

COURT CLERK: As the Court pleases, M'Lady.

COURT: No cost, no. Matter removed, to be taken to be issued in the magistrate's court, no costs. ...[Vernacular]

COURT ADJOURNS"

5. The amounts being claimed against the respondents were R11 694.11 under claim A and R64 134.11 under claim B arising from the breach of two separate written rental agreements. Only the second respondent had delivered a notice of intention to defend.

6. Rule 42(1)(b) states as follows:

"1. The court may, in addition to any other powers it may have, mero motu or upon the application of any party affected, rescind or vary:

...

*b. an order or judgement in which there is an **ambiguity** or a **patent error** or omission, but only to the extent of such ambiguity, error or omission; (emphasis added)"*

7. In this regard, the applicant seeks to have the word "issued" in the order granted by Molopa-Sethosa J amended to "transferred" as this was a patent error or leads to ambiguity provided for by Rule 42(1)(b).

8. The monetary values of the claims are clearly within the jurisdiction of a magistrate's court. A full bench decision of this division, (*Nedbank Ltd v Thobejane & Similar Matters* 2019(1) SA 594 (GP)) at paragraph 96 states as follows:

- “(1) To promote access to justice, as from 2 February 2019 civil actions and/or applications, where the monetary value claimed is within the jurisdiction of the magistrates' courts, should be instituted in the magistrates' court having jurisdiction, unless the High Court has granted leave to ear the matter in the High Court.*
- (2) It is declared that a High Court is entitled to transfer a matter mero motu to another court, ie magistrates' court and/or local provincial divisions, if tis is in the interests of justice to do so.”*

9. The transcript is clear and so is the intention of Molopa-Sethosa J. The words “to be taken” in the transcript were the ones being clarified with the next part of the sentence “to be issued in the magistrate's court”; hence they do not appear in the final order. Reference to the transcript bears this out, hence the applicants had to come back to court with this supplication instead of the amendments they sought to effect with the Judge's Registrar.

10. Further to this, if it was the intention of Molopa-Sethosa J to transfer the matter to the magistrate's court, then the honourable judge was under an obligation to consider the interests of justice, which would have included amongst other things an order as to costs, given what has transpired in the matter thus far. The second respondent has incurred costs in this court defending this matter, opposing an unnecessary summary judgement and taking interlocutory steps against the irregular transfer of this matter to the magistrate's court at the behest of the applicants. It is the applicant as *dominus litis* who chose the incorrect forum to institute its action. It cannot be said that Molopa-Sethosa J would have transferred this matter to the magistrate's court, in the absence of the second respondent who had clearly chosen to defend the matter and incurred costs in that regard.
11. Apart from reliance on the *Nedbank v Thobejane* matter, no case is made out in terms of Rule 42(1)(b) to illustrate that there was indeed a patent error, omission or ambiguity.
12. It was on this basis that the application was dismissed with costs as the applicant had failed to illustrate that the court order granted by Molopa-Sethosa J did not reflect the court's intention,

M A LUKHAIMANE
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Appearances:

On behalf of the Applicant	:	Adv C Cothill
Instructed by	:	Smit Jones & Pratt Attorneys
On behalf of the 2 nd Respondent	:	Adv KA Wilson
Instructed by	:	Christie Briel Attorneys
Date of hearing	:	1 December 2020
Date of judgment	:	26 January 2021